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IN THE UNITED STATES DISTRICT COURT OF ALL THE/AND

EASTERN DISTRICT OF WISCONSIN

U.S. DISTRICT COURT  
EASTERN DISTRICT-WI  
FILED

JIMMY DURANT,

PETITIONER

2009 DEC 10 A 10:34

JON W. SANFILIPPO, CLERK  
MAIL-REC'D

CRIMINAL CASE NO.

2:07CR00123-LA2

-V-

JUDGE LYNN ADELMAN

UNITED STATES OF AMERICA,

RESPONDENT

MOTION TO RECAPTURE SEIZED

FUNDS OF DISMISSED FORFEITE

FUNDS AND ORDER

NOW comes the petitioner, Jimmy Durant, Pro Se, through and by this petition to district court to reclaim the seized funds that were not a part of any criminal activity, and do request any and all hearings that will have effects and allow his mother, Arcola Durant, whom is no part of any illegal activity, scheme, or investigations and do have great standing to challenge to be a part of this cause of action to have seized funds released back to the Durant family.

It is crucial that the petitioner do initiate these proceeding and to be a part of them being that he is the utmost person to know each and every detail that is involved with what the government was not to suppose to do, but did.

RESPECTFULLY SUBMITTED, PRO SE  
JIMMY DURANT # 08880-089  
FCI ELKTON, P.O. BOX 10  
LISBON, OHIO 44432

The petitioner was the recipient of a criminal complaint filed against him on May 9, 2007, and the petitioner was indicted on May 22, 2007, and on June 19, 2007 a notice of particulars for forfeiture of property record #50 of this case number, and then the petitioner was superseded(indicted) on July 7, 2007. The USC violations were 21§841 and 846, up to that point the petitioner was represented by Attorney Flangan. Attorney Flanagan was replaced by Attorney Marquis on or about September 17, 2007. On April 2, 2008 the petitioner filed a motion, pro se, to dismiss Attorney Marquis for ineffective assistance of counsel, record# 317 and the motion was denied by this court on the same day, and that was record# 539. The petitioner was subsequently sentenced to a prison term of 78 months.

At record#546, November 20, 2008, a motion was filed by the government to dismiss the property forfeiture notice, on the same day at record#548 ~~this court granted the motion to dismiss the forfeiture notice~~, and that is what this cause fo action is precisely about...for it do appears that the funds, which are a business check for \$41,000.00, should be returned without delay to the petitioner, ~~his mother and -his- children~~ immediately.

The check in question is property of T.C. Home Improvement of which is the legal business of Mr Durant, that did legitimate work at 3344 Ridgecrest Street, Memphis, Tenn 38217, owned by a Mr Edward Gibson. The petitioner worked on the home for a year off and on, of which he was upgrading and remodeling the entire house for \$55,000.00 of which Gibson sent to the petitioner \$10,000.00 and a cashiers check for the remainder \$41,000.00. Federal agents seized \$1,200 out of house of the petitioner's at 2577 N.28th, Milwaukee Wis, 53208...and the money had noting do with drugs or any other illegal activity.

In addition, federal agents tore up a day care that the petitioner was also remodeling, and they seized his car, money, check, but they did release the petitioner's car back to him. It was quoted by Attorney Marquis, that he was quoting AUSA Daniel H. Sanders, the prosecutor on this case, that they could not prove that the money and check confiscated was drug money or was in any way related or connected to any drug activities.

It is without saying that the funds should have been released back to the petitioner or the petitioner's family, and because this cause of action is one of a complex nature and the petitioner do need to receive some documents that were filed in this court in order for him to be successful in recuperating his seized funds, the petitioner do make this initial filing and will be filing a more comprehensive response once the government respond and the petitioner has the proper documents that he may need.

The petitioner do cite cases of U.S v Lester, 85 F3d 1409, that was carried to 232 F3d 898, Christunas v U.S., 61 FSupp 2d 642, U.S v Herrero, 893 F2d 1512, CA 7th cir. For 21USCS 853 (d)(2) that there is a rebuttable presumption at trial that any property of a person convicted of a felony under this title or title III is subject to forfeiture under this section if the United State establishes by a preponderance of the evidence that--- there was no likely source for such property other than the violation of this title or title III, and that is no the case in this case, the likely source for the money seized in this case is clearly the legal work of a legal business without any illegal activities connected to it at all. That is also supported by the AUSA admission that there is no connection, or rather that they cannot prove that any of the money seized was apart of any drug activity. And once the order to dismiss the forfeiture proceedings any and all monies should have been duly returned to petitioner and/or family.

CONCLUSION:

The petitioner do submit this filing as the first of many that he do believe that he will have to file to secure his return of the seized funds in question. And unless there is a concedement by the government the petitioner will be requesting any and all copies of everything related to the seizure of his mony(cashier check) along with a copy of said check and any and all testimony that the government did use to make the seizure that they did. And in the alternative of the court granting the peitioner the return of his seized cashier check, then the petitioner do ask that the court order the government to turn over to the petitioner any and all documents related to said check so that the petitioner can properly contest the alleged seizure and detainment of the funds that are rightly the petitioner's.

I CERTIFY THAT A FULL AND COMPLETE COPY OF THIS SAID PETITION WAS OLACED IN THE INSTITUTION MAIL TO BE MAILED OUT TO AUSA DANIEL H.SANDERS, AT THE U.S.ATTORNEYS OFFICE AT 517 EAST WISCONSIN AVENUE, room 530 MILWAUKEE, WIS 53202 ON THIS THIRD DAY OF DECEMBER, 2009

RESPECTFULLY SUBMITTED PRO SE,

JIMMY DURANT# 088809089

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LISBON, OHIO 44432

*Jimmy Durant*